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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

GREGORY P. BULRESON,

Defendant.

2:16-CR-00046-GMN-PAL

**GOVERNMENT'S RESPONSE IN  
OPPOSITION TO DEFENDANT  
BULRESON'S OBJECTION TO  
ORDER AND REPORT OF  
FINDINGS AND  
RECOMMENDATION (ECF No.  
1344)**

**CERTIFICATION:** Pursuant to Local Rule 12-1, this Response is timely filed.

The United States, by undersigned counsel, submits the following:

On October 13, 2016, defendant Burleson filed a Motion to Suppress Un-Mirandized Tape Recorded Interview (EFC No. 876) and on November 16, 2016, he filed a Motion to Suppress Un-Mirandized Tape Recorded Interview of Defendant to Law Enforcement Agent that was a Product of Prior Unconstitutional

1 Interrogation. ECF No. 982. The government responded to both motions, ECF Nos.  
2 926, 1071, and provided the Court with the statements at issue. ECF No. 1072.

3 The motions were referred to U.S. Magistrate Judge Peggy Leen pursuant to  
4 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4 of the Local Rules of Practice. On December  
5 13, 2016, Judge Leen held a hearing on the motions. On January 11, 2017, Judge  
6 Leen entered an Order and Report of Findings and Recommendation (“Report”) that  
7 Burleson’s motions be denied as both statements were voluntary. ECF No 1277. In  
8 addition, Judge Leen found that an evidentiary hearing was unnecessary. *Id.*

9 On January 18, 2017, Burleson filed objections to the Report. ECF No. 1344.  
10 He reiterates his argument that his October 27, 2014 videotaped interview was  
11 involuntary, because undercover agents supplied him with “copious amounts of  
12 alcohol.” Burleson also reiterates his argument that his January 15, 2015 recorded  
13 call with an FBI agent should be suppressed as a product of the unconstitutional  
14 October 2014 interview.

15 The government opposes Burleson’s objections for the reasons articulated in  
16 its original responses, ECF Nos. 926, 1071, the recordings themselves, ECF No.  
17 1072, its arguments at the December 13, 2016 hearing, and Judge Leen’s Report.

18 The sole issue is whether his two statements were voluntary. Burleson  
19 simply makes general and conclusory allegations that his was free will was overborn  
20 by alcohol on October 27, 2014. Judge Leen carefully reviewed Burleson’s October  
21 27, 2014 videotaped interview and reached the only logical result:  
22  
23  
24

1 In short, the record simply does not support Burleson's claim that he was  
2 physically or mentally impaired, or 'grossly intoxicated' at any point  
3 during the interview. The video depicts a person who was eager to talk  
4 about the events at the Bundy ranch, and to outline his own involvement  
and motivation. In fact, at one point during the interview Burleson made  
admissions about why he went to the site, prefacing his remarks with "I  
know this is on tape, but I went there to...."

5 Report at 11. Judge Leen also carefully reviewed Burleson's January 2015,  
6 telephone conversation with an FBI special agent and found that it made "clear that  
7 Burleson was eager to discuss his involvement at Bundy Ranch....." Report. *Id.*  
8 Thus Judge Leen correctly found that Burleson's statements were voluntary.

9 Judge Leen's review of the statements supports her denial of an evidentiary  
10 hearing. The record is clear that Burleson was not "too intoxicated to think clearly."  
11 Burleson had ample opportunity in his pleadings and at the December 13, 2016  
12 hearing to provide an order of proof or allege specific facts that facts would require  
13 an evidentiary hearing. *See United States v. Howell*, 231 F.3d 615, 620 (9th Cir.  
14 2000). Burleson failed to do so and furthermore the video of his October 2014  
15 interview "belies his unsupported claims he was plied with alcohol by the agents or  
16 [was] grossly intoxicated." Report at 6. Thus Judge Leen did not abuse her  
17 discretion in denying an evidentiary hearing.

18  
19 Burleson's remaining objections are irrelevant rhetoric. Burleson claims he  
20 was "interrogated" and subjected to "sophisticated psychological manipulation." In  
21 short, Bureleson takes issue with the fact that he eagerly discussed his involvement  
22 in assaulting law enforcement officers with both an undercover FBI agent and  
23 someone he knew to be an FBI agent. Burleson, without citation to any relevant  
24

1 authority, claims that the use of an undercover agent amounted to a “gigantic abuse  
2 of government resources” and “prosecutorial misconduct.” ECF No. 1344 at 4. Of  
3 course undercover investigations are often vitally important. Accordingly, courts  
4 have repeatedly upheld the use of undercover operations and the deceit that  
5 necessary accompanies that practice. *See e.g. Hoffa v. United States*, 385, U.S. 293  
6 (1966) (holding that placing an undercover agent near a subject in order to gather  
7 incriminating information was permissible under the Fifth Amendment).  
8 Burleson’s consensual conversations with the undercover agent and the know agent  
9 bear no resemblance to the kind of corrosive custodial interrogations courts have  
10 ruled constitutionally impermissible. *See* Report at 8-9 citing cases.

11 For the reasons given above, the government asks that the Court overrule  
12 Burleson’s objections and enter an order adopting Judge Leen’s Report.

13 Dated this 1<sup>st</sup> day of February 2017.

14 Respectfully submitted,

15 DANIEL G. BOGDEN  
16 United States Attorney

17 //s//

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**CERTIFICATE OF SERVICE**

I certify that I am an employee of the United States Attorney's Office. A copy of the foregoing **GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDANT BURLESON'S OBJECTION TO ORDER AND REPORT OF FINDINGS AND RECOMMENDATION (ECF NO. 1344)** was served upon counsel of record, via Electronic Case Filing (ECF).

**DATED** this 1<sup>st</sup> day of February, 2017.

*/s/ Steven W. Myhre*

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STEVEN W. MYHRE  
Assistant United State Attorney